

SENATE SUMMARY OF HOUSE AMENDMENTS

SB 256 By Senator Chaisson

KEYWORD AND SUMMARY AS RETURNED TO THE SENATE

COMMERCIAL REGULATIONS. Enacts the Louisiana Exchange Sale of Receivables Act.
(gov sig)

SUMMARY OF HOUSE AMENDMENTS TO THE SENATE BILL

1. Made numerous technical changes.
2. Replaced references and summaries of present law with an illustrative list of present law provisions which are not implicitly repealed or amended by proposed law.

DIGEST OF THE SENATE BILL AS RETURNED TO THE SENATE

DIGEST

Chaisson

SB No. 256

Present law protects purchasers of accounts, chattel paper, payment intangibles, or promissory notes by providing a notice filing system.

Present law provides that in the absence of fraud or intentional misrepresentation, the parties characterization of a sale of accounts, chattel paper, payment intangibles, or promissory notes is conclusive that the transaction is a true sale, and not a secured transaction.

Proposed law retains present law.

Proposed law provides for legislative intent that specifically rejects common law legal theories under which recourse sales of receivables can be recharacterized as loans or credit accommodations, as being contrary to La. civil law principles that apply to sales of receivables over exchanges located in this state.

Proposed law defines an "exchange" as an electronic or other marketplace over which sellers may offer and sell their receivables to qualified buyers.

Proposed law applies to all sales of receivables over exchanges located in La., irrespective of whether the buyer or the seller of the receivable is a La. resident, business organization or other entity, provided that the buyer and the seller contractually agree that such sales are deemed to be consummated in La., subject to La. law, and such sales of receivables result in true sales for all purposes.

Proposed law deems conclusively that an exchange is located in La. when the exchange is owned and operated by a La. business organization having 50% or more of its operational employees located in La., and that the La. business organization declares in an affidavit filed under oath in the conveyance office of the parish in which the organization has its principal place of business, that the affiant maintains its principal place of business in that parish.

Proposed law provides that all sales of receivables over exchanges subject to proposed law shall conclusively result in consummated true sales for all purposes, and are not limited to a bankruptcy context.

Proposed law provides that sales of receivables over exchanges located in La. are not subject to recharacterization.

Proposed law provides that sales of receivables, as evidenced by the seller's written agreement, over exchanges located in La. are binding on the seller.

Proposed law provides that any person attempting to recharacterize a sale of a receivable over an exchange located in La. as anything other than a true sale is personally liable and obligated to reimburse the buyer for costs expended in defense of the status of the sale as a true sale.

Proposed law applies to all sales of receivables over exchanges located in La., irrespective of the domicile or other location of the buyer or the seller.

Proposed law provides that the buyer is deemed to be the owner of the purchased receivable, and has the right to all of the following actions:

- (1) To collect the receivable from the account debtor or other obligated person;
- (2) To resell the receivable to a subsequent buyer;
- (3) To pledge or otherwise grant a security interest in the receivable in favor of the buyer's creditor; and
- (4) To reflect the receivable as an asset on the buyer's books and records.

Proposed law is deemed to supplement and not to conflict with pertinent provisions of the UCC.

Proposed law provides that a seller shall not maintain an action against an owner or operator of an exchange or against a buyer of receivables unless there is an agreement in writing setting forth the terms and conditions of the agreement.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 9:3131.1-3131.9)

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